

1 JOHN D. PERNICK, SBN 155468
jpernick@be-law.com
2 BERGESON, LLP
111 N. Market Street, Suite 600
3 San Jose, CA 95113
Telephone: (408) 291-6200
4 Facsimile: (408) 297-6000

5 Attorneys for Defendant
GRAPH FOUNDATION, INC.
6
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 NEO4J, INC., a Delaware corporation, and
12 NEO4J SWEDEN AB, a Swedish corporation

13 Plaintiffs,
14

15 vs.

16 GRAPH FOUNDATION, INC., an Ohio
17 corporation, GRAPHGRID, INC., and
18 ATOMRAIN INC., a Nevada corporation

19 Defendant.
20
21
22
23
24
25
26
27
28

Case No. 5:19-CV-06226-EJD

**DECLARATION OF JOHN D. PERNICK IN
SUPPORT OF GRAPH FOUNDATION,
INC.'S MOTION TO DISMISS**

Date: October 29, 2020

Time: 9:00 a.m.

Place: Courtroom 4, 5th Floor

Judge: Hon. Edward J. Davila

1 John D. Pernick declares as follows:

2 1. I am attorney duly licensed to practice in the State of California and duly admitted
3 to practice before this Court. I am a member of Bergeson, LLP, counsel of record for defendant
4 Graph Foundation, Inc. ("GFI") in this action. I have personal knowledge of the facts stated
5 herein and, if called and sworn as a witness, could and would testify thereto.

6 2. Attached as Exhibit 1 is a true and correct copy of the GNU Affero General Public
7 License version 3 (AGPLv3) by Free Software Foundation from the GNU website (URL:
8 <http://www.gnu.org>). I printed out Exhibit 1 from the GNU website.

9 3. Attached as Exhibit 2 is a true and correct copy of the Neo4j Sweden Software
10 License referenced in the Amended Complaint. This license is located at the Neo4j GitHub
11 repository at <https://github.com/neo4j/neo4j/blob/3.4/enterprise/neo4j-enterprise/LICENSE.txt>. I
12 printed out Exhibit 2 from this website.

13 4. Attached as Exhibit 3 is a true and correct copy of the contents page for
14 enterprise/neo4j-enterprise source code files from the ONgDB GitHub repository page
15 <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/neo4j-enterprise>. The contents
16 page shows both the LICENSE.txt file referenced in the Amended Complaint at paragraph 68 and
17 Exhibit 36 as well as the NOTICE.txt file referenced in the Motion to Dismiss. The printouts at
18 Exhibit 36 of the Amended Complaint are comprised of LICENSE.txt files from various source
19 code folders from version 3.5.9 of ONgDB, including the LICENSE.txt file described on this
20 contents page. I printed out Exhibit 3 from this website.

21 5. Attached as Exhibit 4 is a true and correct copy of the contents of the NOTICE.txt
22 page located at [https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/auth-plugin-](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/auth-plugin-api/NOTICE.txt)
23 [api/NOTICE.txt](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/auth-plugin-api/NOTICE.txt). This is the NOTICE.txt file for the ONgDB source code files accessible through
24 the webpage <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/auth-plugin-api>.
25 Exhibit 36 to the Amended Complaint contains a printout with information obtained from the
26 LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file from
27 the above NOTICE.txt webpage.

6. Attached as Exhibit 5 is a true and correct copy of the contents of the NOTICE.txt page located at <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/backup/NOTICE.txt>. This is the NOTICE.txt file for the ONgDB source code files accessible through the webpage <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/backup>. Exhibit 36 to the Amended Complaint contains a printout with information obtained from the LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file from the above NOTICE.txt webpage.

7. Attached as Exhibit 6 is a true and correct copy of the contents of the NOTICE.txt page located at <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/causal-clustering/NOTICE.txt>. This is the NOTICE.txt file for the ONgDB source code files accessible through the webpage <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/causal-clustering>. Exhibit 36 to the Amended Complaint contains a printout with information obtained from the LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file from the above NOTICE.txt webpage.

8. Attached as Exhibit 7 is a true and correct copy of the contents of the NOTICE.txt page located at <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cluster/NOTICE.txt>. This is the NOTICE.txt file for the ONgDB source code files accessible through the webpage <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/cluster>. Exhibit 36 to the Amended Complaint contains a printout with information obtained from the LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file from the above NOTICE.txt webpage.

9. Attached as Exhibit 8 is a true and correct copy of the contents of the NOTICE.txt page located at <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/com/NOTICE.txt>. This is the NOTICE.txt file for the ONgDB source code files accessible through the webpage <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/com>. Exhibit 36 to the Amended Complaint contains a printout with information obtained from the LICENSE.txt file available

1 through that same web page. I printed out the NOTICE.txt file from the above NOTICE.txt
2 webpage.

3 10. Attached as Exhibit 9 is a true and correct copy of the contents of the NOTICE.txt
4 page located at

5 <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cypher/acceptance-spec->

6 <suite/NOTICE.txt>. This is the NOTICE.txt file for the ONgDB source code files accessible
7 through the webpage

8 <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/cypher/acceptance-spec-suite>.

9 Exhibit 36 to the Amended Complaint contains a printout with information obtained from the
10 LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file from
11 the above NOTICE.txt webpage.

12 11. Attached as Exhibit 10 is a true and correct copy of the contents of the NOTICE.txt
13 page located at

14 <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cypher/compatability-spec->

15 <suite/NOTICE.txt>. This is the NOTICE.txt file for the ONgDB source code files accessible
16 through the webpage

17 <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/cypher/compatability-spec-suite>.

18 Exhibit 36 to the Amended Complaint contains a printout with information obtained from the
19 LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file from
20 the above NOTICE.txt webpage.

21 12. Attached as Exhibit 11 is a true and correct copy of the contents of the NOTICE.txt
22 page located at <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cypher/compiled->

23 <expressions/NOTICE.txt>. This is the NOTICE.txt file for the ONgDB source code files accessible
24 through the webpage

25 <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/cypher/compiled-expressions>.

26 Exhibit 36 to the Amended Complaint contains a printout with information obtained from the
27 LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file from
28 the above NOTICE.txt webpage.

1 13. Attached as Exhibit 12 is a true and correct copy of the contents of the NOTICE.txt
2 page located at
3 <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cypher/cypher/NOTICE.txt>. This
4 is the NOTICE.txt file for the ONgDB source code files accessible through the webpage
5 <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/cypher/cypher>. Exhibit 36 to the
6 Amended Complaint contains a printout with information obtained from the LICENSE.txt file
7 available through that same web page. I printed out the NOTICE.txt file from the above
8 NOTICE.txt webpage.

9 14. Attached as Exhibit 13 is a true and correct copy of the contents of the NOTICE.txt
10 page located at [https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cypher/morsel-](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cypher/morsel-runtime/NOTICE.txt)
11 [runtime/NOTICE.txt](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cypher/morsel-runtime/NOTICE.txt). This is the NOTICE.txt file for the ONgDB source code files accessible
12 through the webpage
13 <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/cypher/morsel-runtime>. Exhibit
14 36 to the Amended Complaint contains a printout with information obtained from the
15 LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file from
16 the above NOTICE.txt webpage.

17 15. Attached as Exhibit 14 is a true and correct copy of the contents of the NOTICE.txt
18 page located at [https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cypher/pysical-](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cypher/pysical-planning/NOTICE.txt)
19 [planning/NOTICE.txt](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cypher/pysical-planning/NOTICE.txt). This is the NOTICE.txt file for the ONgDB source code files accessible
20 through the webpage
21 <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/cypher/physical-planning>. Exhibit
22 36 to the Amended Complaint contains a printout with information obtained from the
23 LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file from
24 the above NOTICE.txt webpage.

25 16. Attached as Exhibit 15 is a true and correct copy of the contents of the NOTICE.txt
26 page located at [https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cypher/slotted-](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cypher/slotted-runtime/NOTICE.txt)
27 [runtime/NOTICE.txt](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/cypher/slotted-runtime/NOTICE.txt). This is the NOTICE.txt file for the ONgDB source code files accessible
28 through the webpage

1 <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/cypher/clotted-runtime>. Exhibit
2 36 to the Amended Complaint contains a printout with information obtained from the
3 LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file from
4 the above NOTICE.txt webpage.

5 17. Attached as Exhibit 16 is a true and correct copy of the contents of the NOTICE.txt
6 page located at [https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/deferred-](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/deferred-locks/NOTICE.txt)
7 [locks/NOTICE.txt](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/deferred-locks/NOTICE.txt). This is the NOTICE.txt file for the ONgDB source code files accessible
8 through the webpage [https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/deferred-](https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/deferred-locks)
9 [locks](https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/deferred-locks). Exhibit 36 to the Amended Complaint contains a printout with information obtained from
10 the LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file
11 from the above NOTICE.txt webpage.

12 18. Attached as Exhibit 17 is a true and correct copy of the contents of the NOTICE.txt
13 page located at <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/ha/NOTICE.txt>.
14 This is the NOTICE.txt file for the ONgDB source code files accessible through the webpage
15 <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/ha>. Exhibit 36 to the Amended
16 Complaint contains a printout with information obtained from the LICENSE.txt file available
17 through that same web page. I printed out the NOTICE.txt file from the above NOTICE.txt
18 webpage.

19 19. Attached as Exhibit 18 is a true and correct copy of the contents of the NOTICE.txt
20 page located at
21 <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/kernal/NOTICE.txt>. This is the
22 NOTICE.txt file for the ONgDB source code files accessible through the webpage
23 <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/kernal>. Exhibit 36 to the
24 Amended Complaint contains a printout with information obtained from the LICENSE.txt file
25 available through that same web page. I printed out the NOTICE.txt file from the above
26 NOTICE.txt webpage.

27 20. Attached as Exhibit 19 is a true and correct copy of the contents of the NOTICE.txt
28 page located at

1 <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/management/NOTICE.txt>. This
2 is the NOTICE.txt file for the ONgDB source code files accessible through the webpage
3 <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/management>. Exhibit 36 to the
4 Amended Complaint contains a printout with information obtained from the LICENSE.txt file
5 available through that same web page. I printed out the NOTICE.txt file from the above
6 NOTICE.txt webpage.

7 21. Attached as Exhibit 20 is a true and correct copy of the contents of the NOTICE.txt
8 page located at
9 <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/metrics/NOTICE.txt>. This is the
10 NOTICE.txt file for the ONgDB source code files accessible through the webpage
11 <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/metrics>. Exhibit 36 to the
12 Amended Complaint contains a printout with information obtained from the LICENSE.txt file
13 available through that same web page. I printed out the NOTICE.txt file from the above
14 NOTICE.txt webpage.

15 22. Attached as Exhibit 21 is a true and correct copy of the contents of the NOTICE.txt
16 page located at [https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/neo4j-](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/neo4j-enterprise/NOTICE.txt)
17 [enterprise/NOTICE.txt](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/neo4j-enterprise/NOTICE.txt). This is the NOTICE.txt file for the ONgDB source code files accessible
18 through the webpage [https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/neo4j-](https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/neo4j-enterprise)
19 [enterprise](https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/neo4j-enterprise). Exhibit 36 to the Amended Complaint contains a printout with information obtained
20 from the LICENSE.txt file available through that same web page. I printed out the NOTICE.txt
21 file from the above NOTICE.txt webpage.

22 23. Attached as Exhibit 22 is a true and correct copy of the contents of the NOTICE.txt
23 page located at [https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/neo4j-harness-](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/neo4j-harness-enterprise/NOTICE.txt)
24 [enterprise/NOTICE.txt](https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/neo4j-harness-enterprise/NOTICE.txt). This is the NOTICE.txt file for the ONgDB source code files accessible
25 through the webpage [https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/neo4j-](https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/neo4j-harness-enterprise)
26 [harness-enterprise](https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/neo4j-harness-enterprise). Exhibit 36 to the Amended Complaint contains a printout with information
27 obtained from the LICENSE.txt file available through that same web page. I printed out the
28 NOTICE.txt file from the above NOTICE.txt webpage.

24. Attached as Exhibit 23 is a true and correct copy of the contents of the NOTICE.txt page located at <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/procedure-compiler-enterprise-tests/NOTICE.txt>. This is the NOTICE.txt file for the ONgDB source code files accessible through the webpage <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/procedure-compiler-enterprise-tests>. Exhibit 36 to the Amended Complaint contains a printout with information obtained from the LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file from the above NOTICE.txt webpage.

25. Attached as Exhibit 24 is a true and correct copy of the contents of the NOTICE.txt page located at <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/query-logging/NOTICE.txt>. This is the NOTICE.txt file for the ONgDB source code files accessible through the webpage <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/query-logging>. Exhibit 36 to the Amended Complaint contains a printout with information obtained from the LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file from the above NOTICE.txt webpage.

26. Attached as Exhibit 25 is a true and correct copy of the contents of the NOTICE.txt page located at <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/security/NOTICE.txt>. This is the NOTICE.txt file for the ONgDB source code files accessible through the webpage <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/security>. Exhibit 36 to the Amended Complaint contains a printout with information obtained from the LICENSE.txt file available through that same web page. I printed out the NOTICE.txt file from the above NOTICE.txt webpage.

27. Attached as Exhibit 26 is a true and correct copy of the contents of the NOTICE.txt page located at <https://github.com/graphfoundation/ongdb/blob/3.5.9/enterprise/server-enterprise/NOTICE.txt>. This is the NOTICE.txt file for the ONgDB source code files accessible through the webpage <https://github.com/graphfoundation/ongdb/tree/3.5.9/enterprise/server-enterprise>. Exhibit 36 to the Amended Complaint contains a printout with information obtained

1 from the LICENSE.txt file available through that same web page. I printed out the NOTICE.txt
2 file from the above NOTICE.txt webpage.

3 28. Attached as Exhibit 27 is a true and correct copy of the contents of the NOTICE.txt
4 page located at <https://github.com/graphfoundation/ongdb/blob/3.5.9/integrationtests/NOTICE.txt>.
5 This is the NOTICE.txt file for the ONgDB source code files accessible through the webpage
6 <https://github.com/graphfoundation/ongdb/tree/3.5.9/integrationtests>. Exhibit 36 to the Amended
7 Complaint contains a printout with information obtained from the LICENSE.txt file available
8 through that same web page. I printed out the NOTICE.txt file from the above NOTICE.txt
9 webpage.

10 29. Attached as Exhibit 28 is a true and correct copy of the contents of the NOTICE.txt
11 page located at
12 <https://github.com/graphfoundation/ongdb/blob/3.5.9/packaging/standalone/NOTICE.txt>. This is
13 the NOTICE.txt file for the ONgDB source code files accessible through the webpage
14 <https://github.com/graphfoundation/ongdb/tree/3.5.9/packaging/standalone>. Exhibit 36 to the
15 Amended Complaint contains a printout with information obtained from the LICENSE.txt file
16 available through that same web page. I printed out the NOTICE.txt file from the above
17 NOTICE.txt webpage.

18 30. Attached as Exhibit 29 is a true and correct copy of the contents of the NOTICE.txt
19 page located at <https://github.com/graphfoundation/ongdb/blob/3.5.9/stresstests/NOTICE.txt>.
20 This is the NOTICE.txt file for the ONgDB source code files accessible through the webpage
21 <https://github.com/graphfoundation/ongdb/tree/3.5.9/stresstests>. Exhibit 36 to the Amended
22 Complaint contains a printout with information obtained from the LICENSE.txt file available
23 through that same web page. I printed out the NOTICE.txt file from the above NOTICE.txt
24 webpage.

25 31. Attached as Exhibit 30 is a true and correct copy of the contents of the NOTICE.txt
26 page located at <https://github.com/graphfoundation/ongdb/blob/3.5.9/tools/NOTICE.txt>. This is
27 the NOTICE.txt file for the ONgDB source code files accessible through the webpage
28 <https://github.com/graphfoundation/ongdb/tree/3.5.9/tools>. Exhibit 36 to the Amended Complaint

1 contains a printout with information obtained from the LICENSE.txt file available through that
2 same web page. I printed out the NOTICE.txt file from the above NOTICE.txt webpage.

3 32. Attached as Exhibit 31 is a true and correct copy of contents page
4 <https://github.com/graphfoundation/ongdb/tree/3.5.9/packaging> for source code files from the
5 ONgDB GitHub repository. The contents page shows the “standalone” folder. Attached as
6 Exhibit 32 is a true and correct copy of the contents page from that standalone folder,
7 <https://github.com/graphfoundation/ongdb/tree/3.5.9/packaging/standalone>. The NOTICE.txt file
8 attached as Exhibit 28 is shown on that contents page. I printed out Exhibits 32 and 32 from these
9 webpages.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Executed this 21st day of August, 2020 in Alameda, California.

13
14 

15 John D. Pernick
16
17
18
19
20
21
22
23
24
25
26
27
28